REMARKS

This is in response to the Examiner's comments set forth in the Office Action of December 8, 2009. Claims 1-11 are currently pending.

The Office Action

Claim 2 is rejected under 35 U.S.C. § 112, second paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-2 and 11 are rejected under 35 U.S.C. § 102(b) as being anticipate by EP 612562.

Claims 1-4, and 6-11 are rejected under 35 U.S.C. § 102(b) as being anticipated by FR 2627668.

Claims 1-4, and 6-11 are rejected under 35 U.S.C. § 102(b) as being anticipated by WO95/05087.

Claims 1-4, 7-9, and 11 are rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,705,216 to Tyson (hereinafter "Tyson").

Claims 1-4, 7-9, and 11 are rejected under 35 U.S.C. § 102(a) as being anticipated by U.S. Patent No. 4,136,207 to Bender (hereinafter "Bender").

Claim 7 is rejected under 35 U.S.C. § 103(a) as being unpatentable over FR 2627668 or WO95/05087 or Tyson or bender in view of U.S. Patent No. 4,431,675 to Schroeder et al. (hereinafter "Schroeder") and U.S. Patent No. 4,106,991 to Markussen et al. (hereinafter "Markussen").

35 U.S.C. 112, Second Paragraph

Claim 2 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the use of "high" is held as being of indeterminate scope. Claim 2 has been amended to recite "an increased" rather than "high" to clearly define the scope of the claimed swelling capacity. Additionally, the use of "such a high swelling capacity that the swelling is carried out to a substantial extent while the food, *which does not contain the animal food additive*, is still found in the stomach" is objected to as not being clear as to what this

limitation represents. Applicant submits that the phrase "which does not contain the animal food additive" has been deleted from claim 2. Accordingly, the rejection should be withdrawn.

Anticipation Rejection

The Office Action lists numerous anticipation rejection, namely the rejection of claims 1-2 and 11 in view of EP 612562, claims 1-4 and 6-11 in view of FR 2627668, claims 1-4, 6 and 11 in view of WO 95/05087, claims 1-4, 7-9 and 11 in view of Tyson, and claims 1-4, 7-9, and 11 in view of Bender. In each rejection, the Examiner appears to discount the preamble limitations as being directed toward "intended use" and not lending to patentability. Applicant respectfully submits that the phrase "wherein said additive limits food intake during ad-libitum feeding" is not an intended use, but rather a characteristic that defines the additive. However, to clarify that this limitation is a structural limitation and not an intended use, claim 1 has been amended to recite that the additive is "adapted to limit food intake during ad-libitum feeding". As such, this limitation should lend to patentability and not be considered an intended use. Applicant asserts that none of the cited references teach or slightly suggest an additive that is adapted to limit food intake during ad-libitum feeding as is presently claimed.

Claim 1 has further been amended to include additional structural limitations of the lignocellulose. Particularly, amended claim 1 recites that the fibrillated lignocellulose "is substantially free of mycotoxins, contains a reduced microbial burden, and contains a majority of insoluble crude fibers." Applicant respectfully submits that none of the cited references teach or slightly suggest such a lignocellulose as is presently claimed.

With specific reference to EP 612562, the Examiner simply submits that the reference teaches fibrillated lignocellulose. However, Applicant respectfully asserts that this lignocellulose is prepared such that it embodies properties completely opposite to those presently claimed. Specifically, EP 612562 is directed to a an oil sorbent that is prepared by mechanically fibrillating lignocellulose and proposes to overcome the problem that is found in oil sorbents, wherein when it is allowed to float in water for long periods of time, its density becomes high as it absorbs water and eventually sinks. (See col. 3, lines 3-8). Accordingly, EP 612562 teaches that the oil sorbent is required to be highly oil absorptive, but not water-absorptive. (Col. 3, lines 45-46). The material is heat treated to a high temperature such that the water absorption is small and oil absorption is relatively large. In contrast, the subject claims are directed to an animal

food additive with a high water intake capacity to limit food intake due to a feeling of being full.

As such, Applicant has amended claim 1 to specifically recite an animal food additive for economically useful animals which are pregnant, lactating, being fattened or raised that has a water intake capacity of 500-800% and is adapted to limit food intake during ad-libitum feeding. It is therefore asserted that EP 612562 teaches precisely the opposite of that presently claimed, namely, that the oil sorbent material is not water absorptive.

Obviousness Rejection

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over FR 2627668 or WO 95/05087 or Tyson or Bender in view of Schroeder et al. (U.S. Patent No. 4431675) and Markussen et al. (U.S. Patent No. 4106991). According to the Examiner, although FR 2627668 fails to disclose the amounts claimed, Schroeder teaches cellulose amounts in animal feed up to 2.5% and Markussen teaches finely divided cellulose fibers in an amount 2-40%, and it would have been obvious to include the presently claimed range. Applicants traverse the rejection.

Schroeder is directed to an animal feed supplement that is solid and water resistant to limit its consumption during free choice feeding. The supplement comprises an aqueous solution such as molasses, soluble phosphate or phosphoric acid, calcium oxide or soluble calcium salt, and magnesium oxide. Discrete cellulose fibers may be added at low concentrations to reinforce the feed block and prevent cracking. Table 1 includes that cellulose may comprise 0-2.5%, but preferably 0.1-1.0%, of the additive. Claim 5, however, recites that the additive is present in a quantity of 0.5-8.0% of the food. Schroeder makes no mention of the amount of supplement found in the animal food, and therefore one skilled in the art would have no motivation to choose the claimed range.

Markussen is directed to producing enzyme granulates comprising 2 to 40% by weight fibrous cellulose. Similar to Schroeder, Markussen refers to the amount of cellulose in the granulates, not the percentage of granulate present in larger set, such as food. Accordingly, there would have been no teaching or suggestion for one skilled in the art to implement the claimed range for the total concentrate of granulate present in a larger set.

As such, the Examiner has failed to provide any teaching or slight suggestion of including an additive into a feed supply in an amount of 0.5-8% and the rejection of claim 5 should be withdrawn.

CONCLUSION

For the reasons detailed above, it is submitted all remaining claims are now in condition for allowance. The foregoing comments do not require unnecessary additional search or examination.

☒ Remaining Claims, as delineated below:

(1) For	(2) Claims remaining after amendment less highest Number previously paid for		(3) Number Extra
Total Claims	11	- 20 =	0
Independent Claims	1	- 3 =	0

☒ This is an authorization under 37 CFR 1.136(a)(3) to treat any concurrent or future reply, requiring a petition for extension of time, as incorporating a petition for the appropriate extension of time.

☒ The Commissioner is hereby authorized to charge any filing or prosecution fees which may be required, under 37 CFR 1.16, 1.17, and 1.21 (but not 1.18), or to credit any overpayment, to Deposit Account 06-0308.

For at least the foregoing reasons, and in light of the claim amendments provided herein, Applicant respectfully requests that the Examiner reconsider all objections and rejections and withdraw the same. As such, it is respectfully submitted that the subject application is now in condition for allowance. Should the Examiner wish to discuss the foregoing, a telephone call to the undersigned attorney would be welcome.

Respectfully submitted,

Fay Sharpe LLP

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Date

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